

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No.60 of 2000

Reserved on: June 14, 2007.

Decided on : June 28, 2007.

State of Himachal Pradesh

....Appellant.

VERSUS

Subhash Chand

....Respondent.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Ashok Chaudhary, Additional Advocate General.

For the respondent : Mr. Ajay Sharma, Advocate.

Surjit Singh, Judge

This appeal by the State has been directed against the judgment of the trial Magistrate whereby the respondent, who had been sent up for trial for offences punishable under Sections 452, 323, 354 and 506 IPC, has been acquitted.

2. Prosecution's version, as per evidence on record, is like this. Prosecutrix's husband has his shop in a village. On 27.1.1997 around 12 in the noon when the prosecutrix was all alone in the shop, the respondent went there and caught hold of her by her arm and tried to forcibly take her to the adjoining room where the prosecutrix and her husband have their residence, with bad intention. When the prosecutrix put up resistance she was given a push, as a result of which she fell. She was carrying pregnancy of six months at that

Whether the reporters of the local papers may be allowed to see the Judgment?

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time. As a result of the push given by the respondent, resulting in her fall, the prosecutrix started bleeding per vagina. It became a case of threatened abortion. Prosecutrix raised hue and cry for being saved. On hearing her cries, a lady from the neighbourhood, named Kamla Devi, reached. She saw the respondent manhandling the prosecutrix. In the meanwhile, husband of the prosecutrix also reached. He too saw the respondent scuffling with the prosecutrix. Matter was reported to the Pradhan of the Panchayat in the evening on that very day. Pradhan put his endorsement on the writing on 28.1.1997, thereby forwarding it to the SHO. Police investigated the case. Pieces of some broken bangles of the prosecutrix were found on the spot, which were taken into possession. The prosecutrix also produced her jumper (a sort of short shirt worn by the ladies), which allegedly got torn in the course of scuffle.

3. During the course of trial, respondent pleaded innocence. He alleged that in fact the husband of the prosecutrix has made encroachment on 13 *Marlas* land belonging to him and had constructed shops on that piece of land and with regard to this encroachment a dispute between the parties is going on and it is because of this that a false case has been foisted upon him by the husband of the prosecutrix, using the prosecutrix as a tool.

4. Trial court has appraised the evidence in the light of the aforesaid defence plea of the respondent and come to the conclusion that certain contradictions and infirmities appearing in prosecution evidence as also the improvements in the testimony of the prosecutrix and her husband probablize the defence plea.

5. Prosecutrix, who appeared as PW-1, has not only made significant improvements in the earliest version, rendering her testimony in the Court doubtful, but she is also contradicted by the earliest version as also by the testimony of other witnesses and some contradictions in her examination-in-chief and cross-examination. In the examination-in-chief she testified that the accused entered her shop and tried to pull her towards an inner room where she has her residence, with bad intention. However, in the cross-examination she says that the accused entered her shop and brought her outside the shop by dragging. These are two contradictory statements. Again, in her testimony she says that she was given a kick blow on her abdomen but in the earliest version given to the Pradhan in the form of a complaint Ex. PW-8/A this allegation does not find mention. Not only this, husband of the prosecutrix, who reached the spot, also does not corroborate her testimony to this effect. According to the prosecutrix, she was given kick blow after she fell on being pushed by the respondent. Her husband Dalbir Singh PW-2 says that the push was given by the respondent to the prosecutrix within his view but he does not say that she was kicked in the abdomen, after being pushed.

6. It is admitted by the prosecutrix and her husband that there is a dispute between the respondent and themselves with regard to 13 *Marlas* piece of land on which the shop where the incident is alleged to have taken place stands. They have stated that they have constructed the shop after purchasing the piece of land from one Dev Raj, but the respondent claims that the site belongs to

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him. PW-4 Kamla Devi, a neighbour of the prosecutrix, who allegedly reached the spot on hearing her cries, has stated that the field where the prosecutrix and her husband have constructed the shop belongs to the respondent.

7. In view of the abovestated position, the view taken by the trial Court with regard to the evidence of the prosecution cannot be said to be perverse. Hence, the appeal is dismissed.

June 28, 2007_(sd)

(Surjit Singh), J.